

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ELIZABETH A CARTER,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner
of Social Security,

Defendant.

CASE NO. C12-5628 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
AFFIRMING DECISION OF THE
COMMISSIONER

This matter comes before the court on the Report and Recommendation of the Magistrate Judge. Dkt. 17. The court has considered the relevant documents and the remainder of the file herein.

On August 16, 2013, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, concluding that (1) the ALJ did not err in evaluating the medical evidence in the record; (2) the ALJ did not err in assessing Plaintiff's credibility; (3) the ALJ did not err in evaluating the lay witness evidence in the record; (4) the ALJ did not err in the assessment of Plaintiff's residual functional capacity; and (5) the ALJ did not err in regard to the hypothetical

1 question at Step 5 of the sequential evaluation process. Dkt. 17. The Magistrate Judge
2 recommended that the court affirm the decision of the Commissioner of Social Security to deny
3 supplemental security income benefits.

4 On, 2013, Plaintiff filed objections to the Report and Recommendation, advancing
5 essentially the same arguments that she made in her opening and reply briefs (Dkts. 14 and 16).
6 Dkt. 18. In her response, Defendant addresses Plaintiff's arguments. Dkt. 19.

7 The court has reviewed the record *de novo* and concludes that the Magistrate Judge
8 carefully and accurately reviewed the record and thoroughly addressed Plaintiff's claims. The
9 court concurs with the analysis and conclusions of the Magistrate Judge but finds two of
10 Plaintiff's objections noteworthy.

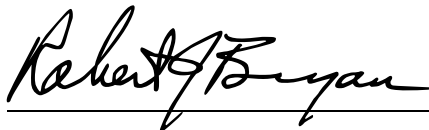
11 First, the Report and Recommendation states that Ms. Reinertsen is neither an acceptable
12 nor "other" medical source. Dkt. 18, at 13. As the Plaintiff contends, SSR 06-03p indicates that
13 Ms. Reinertsen, as a registered and licensed therapist, may qualify as an "other" medical source
14 under 20 CFR §404.1513 and 20 CFR §416.913. Despite this objection, the court finds any error
15 here to be harmless because Ms. Reinertsen overall found plaintiff to be capable of performing
16 sedentary work as also found by the ASJ, and it remains unlikely the ALJ would credit Ms.
17 Reinertsen's opinion, as well as the additional aspects of her opinion that were not specifically
18 discussed by the ALJ, over those of the acceptable medical source opinions she credited. This is
19 not improper post hoc speculation, as the Plaintiff contends (Dkt. 18, at 7), but rather harmless
20 error analysis. Plaintiff's cited authority is not on point. *See Betts v. Colvin*, 2013 WL 3157434
21 (9th Cir. 2013) (involved an ALJ's failure to account for aspects of a doctor's opinion, not an
22 "other" source's opinion).

1 Second, the Plaintiff contends that the Magistrate Judge did not address her argument that
2 Dr. Hoskins' unexplained affirmance of a non-medical opinion is entitled to less weight than the
3 opinions of Plaintiff's treating and examining physicians. Dkt. 18, at 8. Because Dr. Hoskins'
4 opinion is consistent with the medical record and claimant's testimony, the court finds this to be
5 a minor omission in the context of the Magistrate Judge's analysis that does not ultimately affect
6 the case's outcome. Plaintiff's cited authority is not on point. *See Morgan v. Colvin*, 2013 WL
7 3119825 (9th Cir. 2013) (an ALJ gave substantial weight to a non-physician's opinion after
8 mistakenly believing the non-physician was an M.D.)

9 Accordingly, the Report and Recommendation (Dkt. 17) is **ADOPTED**. The decision of
10 the Commissioner of Social Security to deny Plaintiff supplemental security income benefits is
11 **AFFIRMED**.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing *pro se* at said party's last known address.

14 Dated this 26th day of September, 2013.

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17 ROBERT J. BRYAN
18 United States District Judge
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